

NATIONAL INSTITUTES OF HEALTH
Deputy Ethics Counselors and Ethics Coordinators
Meeting Minutes: October 24, 2005

Update on status of investigations: Congressionals, media and self reports of 520s

In reviewing cases over the past two years, the cases with infractions are now:

- In the disciplinary phase
- IC Directors have been informed/briefed
- There will not be any statements to the press
- No public disclosure of any discipline will be made – these are confidential personnel actions and
- We must respect the privacy and be fair to all employees while following the laws and regulations and to uphold confidentiality in each case. We have been criticized for being slow in responding to these cases. Our response to that is that we want to be thorough in evaluating each case and do the right thing so as to be fair across the board. This is a management issue. Ethics staff will not be included in the loop except on a need to know basis. In relation to former employees, criminal cases can be pursued by DoJ, and there are mechanisms by which the Federal government can collect any money owed.

Going forward

OHR is developing revised procedures so that all employees are treated fairly and consistently and a manual issuance is being redrafted. NEO might advise/assist in relation to identifying violations. More guidance to follow.

Question: Can we get some general examples of what kinds of cases have been evaluated and the actions taken against them so we have some kind of reference to use in our daily working routine?

Response: Yes, with time we will be setting up an audit function and we can give this type of information which should be helpful.

Update of Restructuring of the Ethics Program

- Steering committee has approved the broad proposal
- The OD will begin the advertising of the Chief NIH Ethics Officer (CNEO) very soon
- The search committee for the CNEO is being finalized

Question: When is the full time DEC arrangement going to be put in place?

Response: We will be pulling back all delegations and reissuing them over a very short turn around time so there won't be any lapse of authority for someone in the position of DEC. At that time we will look at resources and re-evaluate.

1 – Do all the ICs have someone who will have ethics as a substantial part of their performance contract in place to handle the job?

2 – Whatever the IC proposes – it must be sufficient to handle the ethics load for that IC.

There isn't necessarily going to be a requirement of a "full time" DEC but an arrangement that there will be someone of at high level in the position of handling ethics and who is going to be expected to do so sufficiently.

Question: Will there be a time to justify more staffing?

Response: Yes – during this evaluation period of the DEC and their ethics workload.

HHS 716

Holli will send an email clarifying the 716 form. Items on this email will be:

- We are required to have the 716 supplemental form in place according to the new regs.
- We have narrowed the list of those required to file the 716 to 278, 450 filers and clinical researchers/investigators who are listed on the 1195 form.
- IRTAs are not FTEs, so they don't file a 716 even if they are named on an 1195
- It is due October 31, 2005
- Extensions will only be given on a case by case basis for good cause
- Clinical and research fellows are most likely FTEs, so they would file a 716 if they are listed on the 1195.
- Even if an employee is not required to file a form 716, the employee is still required to comply with section 208 (prohibition against participating in matters that affect ones financial interests)

Reminder: The SAO listing is only a guideline or starting point and not an end point or final listing of all SAOs. If an employee is unsure about a holding, they should list it, describe what it is and the evaluation will be done at the IC ethics office level. Or the employee can contact their DEC/EC and get more guidance. Bottom line, if you think your holdings might be in an SAO, disclose it.

Our regulations do NOT trump the 208 statute. If there is a 208 violation it should have been evaluated and resolved.

Financial Disclosure working group is working on the 450 and 716 review process.

Question: Is there an answer on disclosing holdings of a common law partner?

Response: The answer comes from each individual state law. Marilyn Rogalski would be asked to get a final answer to this question.

Question: If the DEC is ok w/ COI evaluation of the 716 do we still want to involve the supervisor?

Response: Yes, we want to educate and involve supervisors because this is part of their job and is listed on their performance contract as an element. Therefore, they should be knowledgeable and active in this role.

HHS 521 report

Reminder: 521 reports should be evaluated along with the 278 and 450 reports.

Question: If an employee discloses information about a 520 that was never filed/approved what is the action taken?

Response: Have them complete the 520 report for COI analysis only. It cannot be approved retroactively – cannot be signed by the DEC. If the employee wants to continue the activity, they must submit a separate, new 520 and the ICs, in consultation with NIH, can take other action based on the failure as appropriate.

Elton Croy sent out an email requesting status of 278 filings due this Friday, October 28. If you have not responded and cannot meet this deadline please let Elton know when you will be able to get back to him with a final count.

Gretchen reminded that ALL original, certified, 2005 278 forms, along w/ copies of related 520s should be sent directly to Randy Hall's attention in the DAEO's office downtown, by COB December 31, 2005. They should be certified and complete and accompanied by a copy of the position description or meaningful description of the employees job. These packages do not pass through the NEO or Gretchen or Marilyn's office.

Gretchen will be sending out an email requesting how ICs are doing on the new entrant process.

Traci announced and noted that there are a lot of errors in EMIS, i.e., many of the Top 5 employees are not entered in EMIS or the information is incorrect. She encouraged use of the data dictionary and asked that ICs be careful in data entry.

Meeting adjourned 12:10pm